

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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WLODZIMIERZ J. DZWONCZYK,

Plaintiff,

-v.-

5:08-CV-00557  
(NPM/DEP)

SYRACUSE CITY POLICE  
DEPARTMENT; SYRACUSE HOUSING  
AUTHORITY SECURITY; JOHN DOE,  
SYRACUSE HOUSING AUTHORITY  
DETECTIVE; GARY MIGUEL, CHIEF  
OF POLICE, SYRACUSE CITY POLICE  
DEPARTMENT; ONONDAGA COUNTY  
SHERIFF'S OFFICE; ONONDAGA  
COUNTY JUSTICE CENTER; JOHN  
DOES, IN THEIR OFFICIAL AND  
INDIVIDUAL CAPACITIES,

Defendants.

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APPEARANCES:

FOR THE PLAINTIFF:

Wlodzimierz J. Dzwonczyk, *pro se*

FOR THE DEFENDANTS,  
Syracuse City Police Department;  
Gary Miguel, Chief of Police,  
Syracuse City Police Department;  
and John Does, in their official and  
individual capacities:

City of Syracuse Corporation Counsel  
233 East Washington Street  
Room 301 City Hall  
Syracuse, NY 13202

Mary Anne Doherty

FOR THE DEFENDANTS,  
Syracuse Housing Authority Security;  
and John Doe, Syracuse Housing  
Authority Detective:

Sliwa & Lane  
840 Main-Seneca Building  
237 Main Street  
Buffalo, NY 14203-2715

Paul F. Murak

FOR THE DEFENDANTS,  
Onondaga County Sheriff's Office;  
and Onondaga County Justice Center:

Gordon J. Cuffy, Onondaga County  
Attorney  
421 Montgomery Street  
10<sup>th</sup> Floor  
Syracuse, NY 13202

Karen A. Bleskoski

Neal P. McCurn, Senior District Judge

**Summary Order**

Presently before the court is a motion for a preliminary injunction and temporary restraining order ("TRO") by plaintiff, *pro se*, Wlodzimierz J. Dzwonczyk ("Plaintiff"). By his motion, Plaintiff seeks to enjoin defendants "Syracuse City Police, its agents, and employees and police officers" to "stay away

from Plaintiff and his residence[.]” Dkt. No. 11. Defendants, Syracuse City Police Department, Chief of Police Gary Miguel, and John Does (“Defendants”) have failed to oppose or, despite the requirement of this court’s Local Rules, notify the court of their intent not to oppose Plaintiff’s motion. See N.D.N.Y. L.R. 7.1(b)(3). Nonetheless, for the reasons that follow, Plaintiff’s motion is denied.

When deciding a motion for a temporary restraining order, the court follows the same legal standard as that on a motion for a preliminary injunction. Freeman v. McKnight, No. 07-CV-01123, 2007 WL 3254431, at \*1 (N.D.N.Y. Nov. 2, 2007) (citing Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc., 965 F.2d 1224, 1228 (2d Cir.1992)). Generally, the “district court may grant a preliminary injunction where the moving party establishes: (1) that it is likely to suffer irreparable injury if the injunction is not granted, and (2) either (a) a likelihood of success on the merits of its claim, or (b) the existence of serious questions going to the merits of its claim and a balance of the hardships tipping decidedly in its favor.” Id. (citing Moore v. Consolidated Edison Co. of New York, Inc., 409 F.3d 506, 510-511 (2d Cir.2005)). Where, as here, “the movant seeks a mandatory injunction (one that will alter the status quo) rather than a prohibitory injunction (one that maintains the status quo), the likelihood-of-success standard is elevated: the movant must show a clear or substantial likelihood of success.” Lawrence v. Town of Brookhaven Dept. of Hous., Cmty Dev. & Intergovernmental Affairs, No. 07-cv-2243, 2007 WL 4591845, at \*6 (E.D.N.Y. Dec. 26, 2007) (quoting Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 97 (2d Cir.2005)). “Such relief ... is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear

showing, carries the burden of persuasion.” Freeman, 2007 WL 3254431, at \*1 (quoting Moore, 409 F.3d at 510-511).

Here, Plaintiff seeks an order enjoining “Syracuse City Police, its agents, and employees and police officers” from nearing Plaintiff or his residence because he “fears for his safety and well being and [] is not sure why a police officer and an undercover agent . . . came to Plaintiff’s residence, and were knocking on [P]laintiff’s door . . . after Plaintiff had filed his civil rights complaint.” Aff. of Wlodzimierz J. Dzwonczyk, June 6, 2008, Dkt. No. 11-2 (“Dzwonczyk Aff.”). Plaintiff further refers the court to the allegations in his complaint for support of his contention that he “is being, and will continue to be, irreparably harmed by [D]efendants’ actions.” Id.

Plaintiff’s complaint purports to set forth a number of constitutional violations as predicates for civil rights claims pursuant to 42 U.S.C. § 1983. Although several defendants are named in the complaint, those whose behavior Plaintiff seeks to enjoin by the present motion are, as previously identified, the Syracuse City Police Department, Chief of Police Gary Miguel, and unnamed “John Does”. The involvement of these defendants in the events giving rise to Plaintiff’s claims is limited to Plaintiff’s arrest and transport to the Onondaga County Justice Center on May 23, 2008. Plaintiff alleges that on the date in question, the “Syracuse Police Department and Syracuse Housing Authority Security came to [his] residence . . . with two police officers[;] . . . [o]ne was a detective working for the Syracuse Police Department and Syracuse Housing Authority Security, . . . [and] the other was in the police uniform ... .” Compl. ¶ 13. Plaintiff alleges a “Detective” entered his residence and accused him of

aggravated harassment, then arrested Plaintiff by putting handcuffs on his wrists. See id. ¶¶ 15, 16. Plaintiff alleges he was not read his “Miranda rights,” and that the Detective would not let Plaintiff put on his socks or notify his mother that he was leaving prior to Defendants removing Plaintiff from his residence. See id. ¶ 16. Plaintiff further contends the “Detective grabbed [him] and literally dragged him to the elevator” and gave him “little pushes . . . here and there” while Defendants transported Plaintiff to the police car. See id. Finally, Plaintiff claims that at some point he was “thoroughly searched still without Miranda rights read.” Id.

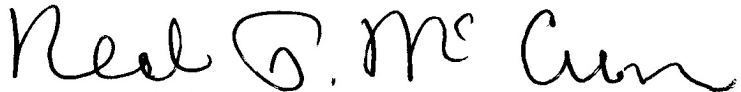
Because Plaintiff seeks a mandatory injunction, he must show a “clear or substantial” likelihood of success on the merits. See Lawrence, 2007 WL 4591845, at \*6. Assuming the truth of the allegations in the complaint, the only action giving rise to a constitutional violation by the Syracuse Police Department and its officer(s) is that a “Detective” “literally dragged” Plaintiff while transporting him to a police car during an arrest, which could be construed as a claim of excessive force in violation of the Fourth Amendment. See, e.g., Tobias v. County of Putnam, 191 F.Supp.2d 364, 378 (S.D.N.Y. 2002). However, even if Plaintiff were to prevail on such a claim, and the court declines to find by a clear or substantial likelihood that Plaintiff would prevail, the court would not award Plaintiff the overly broad injunctive relief he now seeks. Moreover, Plaintiff’s assertion underlying the present motion that “he is not sure why” certain officers came to his residence recently and knocked on his door, is not enough for this court to find that Plaintiff is “likely to suffer irreparable injury if the injunction is not granted.” Freeman, 2007 WL 3254431, at \*1. The court will not enjoin the

entire Syracuse Police Department, “its agents, and employees and police officers” from coming into contact with Plaintiff or coming to his residence on this extremely speculative basis. Accordingly, for the foregoing reasons, Plaintiff’s motion for a TRO and preliminary injunction is denied.

Therefore, it is ORDERED that plaintiff, Wlodzimierz J. Dzwonczyk’s motion for a temporary restraining order and preliminary injunction enjoining defendants, Syracuse City Police Department; Gary Miguel, Chief of Police, Syracuse City Police Department; and John Does in their official and individual capacities, from contacting plaintiff or nearing plaintiff’s person or plaintiff’s residence is DENIED.

IT IS SO ORDERED.

DATED: July 7, 2008  
Syracuse, New York

A handwritten signature in black ink, reading "Neal P. McCurn". The signature is written in a cursive, flowing style. The first name "Neal" is written in a larger, more prominent script, followed by "P." and "McCurn". The signature is positioned above a horizontal line.

Neal P. McCurn  
Senior U.S. District Judge